SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 25

JACK CORBETT AND EL PASO BASEBALL CLUB, INC., PETITIONERS,

vs.

ALBERT B. CHANDLER, INDIVIDUALLY AND AS COMMISSIONER OF BASEBALL, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

INDEX

	Original	Print
Record from the United States District Court for the Southern District of Ohio, Western Division	1	1
Summons	1	1
Amended complaint	2	2
Notice of motion	17	15
Defendant Chandler's alternative motions to dismiss and to strike	17	15
Order of dismissal	20	17
Notice of appeal	21	18
Stipulation as to record	22	19
Clerk's certificate (omitted in printing)	24	
Proceedings in the U.S.C.A. for the Sixth Circuit	25	20
Argument and submission (omitted in printing)	25	
Judgment	25	20
Clerk's certificate (omitted in printing)	26	
Order granting certiorari	27	21

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 30, 1953.

—8916

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

No. 2589

JACK CORBETT and EL PASO BASEBALL CLUB, INC., Plaintiffs,

vs.

ALBERT B. CHANDLER, individually and as Commissioner of Baseball, GEORGE M. TRAUTMAN, individually and as President of the National Association of Professional Baseball Leagues, CINCINNATI BASEBALL CLUB COMPANY, POWEL CROSLEY, JR., individually and as President and Owner of the Cincinnati Baseball Club Company, and WARREN GILES, individually and as General Manager of the Cincinnati Baseball Club Company, Defendants.

SUMMONS—April 14, 1951

To the above named Defendants:

You are hereby summoned and required to serve upon Maurice H. Koodish and David M. Levy, plaintiff's attorneys, whose address is 707 St. Paul Building, County of Hamilton, City of Cincinnati, State of Ohio, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated: April 14, 1951.

Howard E. Parker, Clerk, U. S. District Court, S.D.O.
Charles C. Ebel, Deputy Clerk, U. S. District Court, S. D. O.

[fol. 2] IN UNITED STATES DISTRICT COURT

AMENDED COMPLAINT—Filed September 24, 1951

Plaintiffs Demand Trial by Jury

Plaintiffs, Jack Corbett and El Paso Baseball Club, Inc., by their attorneys, Maurice H. Koodish and David M. Levy and Frederic A. Johnson, Esqs., for their complaint in this action, allege:

I. Plaintiff, Jack Corbett, is a citizen and resident of the City and County of Los Angeles, State of California.

II. Plaintiff, El Paso Baseball Club, Inc., is a corporation organized under the laws of the State of Texas, and said plaintiff corporation through the baseball seasons of 1949 and 1950 had its office and principal place of business in the City of El Paso, State of Texas.

III. Defendant, Albert B. Chandler, is a citizen of the Commonwealth of Kentucky, resides in the Town of Versailles in said Commonwealth, and as Commissioner of Baseball from 1945 until 1951, had his offices and principal place of business in the Carew Tower, in the City of Cincinnati, Hamilton County, State of Ohio.

IV. Defendant, George M. Trautman, is a citizen and resident of the City of Columbus, Franklin County, State of Ohio, and as President of the National Association of Professional Baseball Leagues, has his office and principal place of business at No. 720 East Broad Street in said City, County and State.

V. Defendant, Cincinnati Baseball Club Company, is a domestic corporation organized and existing under and by virtue of the laws of the State of Ohio and has its office and principal place of business at 307 Vine Street in the City of Cincinnati, Hamilton County, State of Ohio.

VI. Defendant, Powel Crosley, Jr., is a citizen and resident of Ohio and is the principal owner and Chairman of the Board of Directors of defendant, Cincinnati Baseball Club Company.

VII. Defendant, Warren Giles, is a citizen and resident [fol. 3] of Ohio and is the President and the General Manager of defendant, Cincinnati Baseball Club Company,

and a member of the Executive Council of the Major Leagues.

VIII. That defendant, Cincinnati Baseball Club Company, owns and operates The Cincinnati "Reds," the professional baseball club representing the City of Cincinnati in The National League of Professional Baseball Clubs (hereinafter referred to as The National League), an unincorporated association formed in the City of New York in 1876; it is now one of the two "Major Leagues" and is presently composed of eight clubs, representing, respectively, the cities of Cincinnati, Ohio, St. Louis, Missouri, Chicago, Illinois, Pittsburgh, Pennsylvania, New York, N. Y., Brooklyn, N. Y., Boston, Massachusetts, and Philadelphia, Pennsylvania.

IX. That the headquarters for The National League is in New York and the office and principal place of business of its President, Ford C. Frick, are at 30 Rockefeller Plaza, in the City, County and State of New York.

X. That the American League was organized in 1901 as a second Major League, and is presently composed of clubs representing, respectively, the cities of Boston, Massachusetts, New York, N. Y., Philadelphia, Pennsylvania, Washington, District of Columbia, Cleveland, Ohio, Detroit, Michigan, Chicago, Illinois, and St. Louis, Missouri.

XI. That the headquarters for The American League is in Chicago, Illinois, and the office and principal place of business of its President, Will Harridge, is at 310 South Michigan Boulevard, in said City and State.

XII. That The National League and The American League comprise the Major Leagues of Organized Baseball.

XIII. The American League is an unincorporated association formed in the City of Chicago in 1901.

XIV. That Organized Baseball consists of the professional baseball clubs organized in leagues within The [fol. 4] United States, the Dominion of Canada, Cuba, and certain cities and towns in Mexico.

XV. That each of the clubs in The National League and each of the clubs in The American League are the properties of corporations which own or lease or otherwise control for occupancy a baseball park or "home grounds" within or adjacent to the City or the portion thereof represented by said clubs.

XVI. That the clubs in The National League and the clubs in The American League engage annually in scheduled games for profit derived by charging fixed prices for tickets of admission to each member of the public attending such game.

XVII. The baseball season extends approximately from mid-April until the first day of October of each year; that each club in The National League and each club in The American League play a schedule of seventy-seven games on their "home grounds" and eleven games on the "home grounds" of every other club in their respective leagues; that each of said clubs in traveling from State to State in the completion of its schedule transports or causes to be transported at its own expense the equipment to play the games.

XVIII. That each "home club" is responsible for the purchase, ordinarily from an interstate seller, of a sufficient number of new baseballs to complete each scheduled game without the necessity for keeping a ball in play that is other than a practically perfect sphere.

XIX. That for every scheduled game played, after first deducting and paying to The National League or The American League, respectively, a fixed percentage pursuant to pre-existing agreement, there is a further division between the "home" and visiting club, likewise carried out pursuant to pre-existing agreement of a fixed percentage of the fees received by the "home" club for admission to its park; that in completing the schedule for each season, state lines are systematically crossed; that radio broadcasters announce "play by play" descriptions of the game [fol. 5] over interstate networks; that television carries the sights and the sounds of the scheduled games across state boundaries; that the seasonal rights to make these broadcasts and telecasts are sold by the clubs of the Major Leagues for large sums.

XX. That radio and television, the newspaper publicity and the other avenues and channels of communication used, attendant upon, necessary for and related to the playing of Major League Baseball, and the purchase by the clubs and Leagues for this purpose of essential equipment and the transportation across state lines of essential equipment and

of the requisite personnel by the clubs and Leagues for the fulfillment of their respective schedules, cause those administering and playing the game to be engaged in interstate commerce and to derive a substantial portion of their income from such source.

XXI. That the "Dream Game" played annually in July between selected members of each League yields to Organized Baseball a larger amount of income for the broadcasting and television rights than is derived from fees for admissions.

XXII. That annually in or about the early part of October, the respective winners of the race or pennant in The National League and The American League play a "World Series" to decide the baseball championship for that season; that the sale of the broadcasting and telecasting rights yields to Organized Baseball from the "World Series" a substantial portion of its income through these sources of interstate commerce; and that the sale of broadcasting and television rights for the 1950 World Series produced a larger revenue than was received for the total fees paid by members of the public for admission to the two ball parks wherein the games of such World Series were played.

XXIII. That further sources of interstate income are derived by the clubs of the Major Leagues from the authority exercised by them in accordance with the provisions of the uniform or standard contracts, under which their players [fol. 6] are employed, to "trade" such players to another club through the assignment by the employing club of the players' contracts to such other club as assignee.

XXIV. That Organized Baseball includes Minor Leagues.

XXV. That these "Minor Leagues" comprise three "AAA" Leagues; two "AA" Leagues; four "A" Leagues; nine "B" Leagues; thirteen "C" Leagues and nineteen "D" Leagues, and comprise the National Association of Professional Baseball Leagues.

XXVI. That Organized Baseball is governed by the Major League Agreement, Major League Rules, Major-Minor League Agreement, Major-Minor League Rules and the National Association Agreement.

XXVII. That these various agreements permit the clubs in the Major Leagues to own or control, or to have their

own agreements with, Minor League clubs for the training and development of players upon such "farm clubs;" and that every Major League club owns one or more of these "Farm Clubs."

XXVIII. That further sources of interstate income are derived by the clubs of the Major Leagues from the authority exercised by them in accordance with the provisions of the uniform or standard contracts, under which the players are employed, to "trade" such players to another club through the assignment by the employing "farm club" directly or as the agent or intermediary for its "parent" Major League club, of the players' contracts to such other club as assignee.

XXIX. That independent Minor League clubs, not members of a "farm" system, nor connected with such system, may also exercise this right to "trade" its players by the assignment of their uniform or standard contracts to an assignee club.

XXX. That the Minor League Clubs in the "AAA" and "AA" Leagues sell their rights to broadcast and telecast their games.

[fol. 7] XXXI. That in order to conserve the personnel of the Major League clubs and to protect team play among their members, the "reserve clause" was initiated in or about the "off-season" of 1879 to 1880.

XXXII. That this clause was adopted originally for five players and was limited at the time of its adoption to that number, and has since been progressively increased.

XXXIII. That this said reserve clause has consistently been construed whenever the right or the ultimate claim of right thereunder has been exercised by or on behalf of Organized Baseball, to give nothing more or less than a prior and exclusive right to the employing club, as against the other clubs in Organized Baseball, to enter into a contract securing its players' services for next season or seasons.

XXXIV. That this construction of the "reserve clause" in the uniform or standard contract was judicially established in 1890 within the six months' period prior to the adoption of the Sherman Anti-Trust Act (15 U. S. C. A. sections 1-7) and reaffirmed in 1914 within a similar period

prior to the adoption of the pertinent section 4 of the Clayton Act (15 U. S. C. A., section 15).

XXXV. That in 1915, the late August Herrmann signed a pleading in his capacity as President of the Cincinnati Exhibition Company, disavowing any legal force in the "reserve clause" to prevent a baseball player from joining a professional league that was independent of Organized Baseball.

XXXVI. That the Cincinnati Exhibition Company was then the owner of the Cincinnati "Reds."

XXXVII. That defendant, Cincinnati Baseball Club Company, operates its club pursuant to the franchise that was granted by The National League before the opening of the baseball season of 1890.

XXXVIII. That any intervening owner or owners of this club, including The Cincinnati Exhibition Company, have operated it under the identical and continuously existing franchise that was hitherto issued as aforesaid prior to the opening of the season of 1890.

[fol. 8] XXXIX. That defendants, Powel Crosley, Jr. and Warren Giles, in their individual and representative capacities have actual or constructive notice of the settled interpretation of the "reserve clause."

XL. That August Herrmann was Chairman of The National Commission, the governing body of Organized Baseball from 1903 until 1921.

XLI. The Constitution of Baseball during these years was The National Agreement of 1903.

XLII. The aforesaid Agreement was replaced by the Major League Agreement of January 12, 1921, under which the late Kenesaw M. Landis became Baseball Commissioner.

XLIII. From January 1915 until April 1922, the interpretation placed during federal anti-trust litigation against Organized Baseball by its attorneys and also by its supreme officials while under oath as witnesses, was in accord with the previous judicial construction of the "reserve clause" as a measure designed for internal protection alone.

XLIV. The late Baseball Commissioner Kenesaw M. Landis never departed from this interpretation of the "reserve clause."

XLV. That consistently with this settled construction of the right of reservation, the duly accredited representatives of the National Association of Professional Baseball Leagues at the Annual Convention held at Asheville, North Carolina, on December 7-9, 1926, included a new provision within the National Association Agreement in the then existing Article Five that defined the powers of the President of the aforesaid National Association; that the above-referred to provision, Article Five, Section 1, paragraph D, read:

> "Negotiations With Industrial and Independent Clubs and Leagues
>
> "(D) The President is authorized to negotiate with and visit, if necessary, the heads of industrial and [fol. 9] independent clubs and leagues with a view of entering into signed agreements with said clubs and leagues for the protection of contracts and informal agreements, including reservation of players affiliated with National Association club members."

XLVI. That Commissioner Landis died on or about the 25th day of November, 1944, and defendant Chandler was elected Commissioner for a seven years' term on or about the 24th day of April, 1945.

XLVII. That in the off-season of 1945 to 1946, steps were taken to introduce Major League Baseball in the Republic of Mexico by the establishment of a competing independent third Major League.

XLVIII. That certain players from Major League clubs in Organized Baseball, including Daniel L. Gardella, "jumped" the "reserve clause" to join the Mexican League.

XLIX. That Vernon Stephens likewise signed a Mexican League contract prior to the opening of the season of 1946 and was induced by defendant Chandler, with the assent of all of the members of Organized Baseball, to breach said contract and to sign a standard contract with his prior club, "The St. Louis Browns" of the American League and to play with them for the season of 1946.

L. That in furtherance of the attempt on the part of Organized Baseball to employ the right of reservation in

restraint of trade and to attempt to monopolize the player market and the professional game, none of its members or representatives disavowed the announcement made by defendant Chandler in the early months of 1946 that he would blacklist all players, including "reserve clause jumpers," who played during the season of 1946 with the Mexican League; nor his subsequent action taken in or about July, 1947, with the assent of "The New York Giants" of The National League, in applying the blacklist to Gardella, when said player applied to him for reinstatement.

[fol. 10] LI. That in support and confirmation of this illegal construction by defendant Chandler of the right of reservation as a binding portion of the standard contract, the duly accredited representatives of Organized Baseball ratified and authorized his interpretation of it for the standard Minor League contract at the Annual Convention held at Miami, Florida, on December 3-5, 1947, by amending former Article Five, Section 1, paragraph D, to redefine the powers of the President of the National Association, now contained in Article Six of the National Association Agreement; that Article Six, Section 6.06, paragraph D, has been allowed to remain unamended at the regular Annual Conventions held in or about December, 1948, 1949 and 1950 and as in force, as aforesaid, since on or about December 5, 1947, reads:

> "(C) Negotiations With Industrial and Independent Clubs and Leagues
>
> The President is authorized to negotiate with and visit, if necessary, the heads of industrial and independent clubs and leagues unaffiliated with the National Association and to enter into written agreements with such clubs and leagues for the protection of the National Association and its members and the respective rights of each, including the reservation of players' contract by clubs or leagues, members of the National Association."

LII. That this inclusion of the right of reservation by the representative of Organized Baseball as an alleged right that might be made the subject of protection on behalf on the clubs of the Minor Leagues of Organized

Baseball through an agreement with independent and unaffiliated clubs and leagues, was a renewed authorization by the representatives of Organized Baseball for defendant Chandler to continue the illegal construction of [fol. 11] the right of reservation he had originally placed upon it before the opening of the season of 1946.

LIII. That during the off-season of 1946, the Major Leagues had previously authorized and ratified the illegal construction placed upon the right of reservation as aforesaid, by defendant Chandler before the opening of that season.

LIV. That the authorization and ratification of this illegal construction was effected by amending the uniform Major League contract to make it purportedly binding through a perpetually and specifically enforceable agreement for renewal that has subsequently been judicially defined as a "reserve clause" despite the change in nomenclature: that said clause contains a void stipulation for the coerced admission by the player of his unique ability, and an unenforceable stipulation on the part of the club to pay the player a $5,000 minimum salary upon the renewal of the uniform contract.

LV. That the said Major League uniform standard contract has remained in force since its adoption for the season of 1947, as aforesaid; and that no contract containing a "reserve clause" of this supposedly binding character had ever been used by Organized Baseball prior to the Commissionership of defendant Chandler.

LVI. That the universal application of the Major and Minor League uniform or standard contracts now in force as the direct and persisting results of the ratification and authorization by the representatives of Organized Baseball of the illegal construction of the right of reservation by defendant Chandler, particularly in its supposedly binding effect upon players who are demonstrably not unique, is contrary to settled principles of equity as adjudicated by all federal and state courts, and specifically those of Ohio, New York and Illinois, the respective headquarters of defendant Trautman and of the National and American Leagues.

LVII. That on February 9, 1949, the Court of Appeals

of the United States for the Second Circuit sustained the [fol. 12] complaint of Daniel L. Gardella under the Sherman and Clayton Acts against defendant Chandler, defendant Trautman and other representatives of Organized Baseball for blacklisting him for exercising his lawful right in 1946 by joining The Mexican League when his contract with Organized Baseball had expired.

LVIII. That about or shortly after the time of said decision, defendant Chandler arrived at an apparent method of avoiding its effect by entering into a reciprocal agreement with Dr. Eduardo Quijano Pitman, the President of the Mexican National League, whereby the clubs in the Minor Leagues of Organized Baseball were required to respect the right of reservation to players under contract with clubs in the aforesaid Mexican League for the corresponding undertaking upon the part of the clubs of that League to respect the right of reservation of clubs in the Minor Leagues.

LIX. That this agreement was not made known to the owners of Minor League clubs until it was published as Bulletin 221 on March 19, 1949 from the office of defendant Trautman quoting a telegram from the office of defendant Chandler pursuant to the authority of said Commissioner.

LX. That the agreement thereby announced imposed reciprocal obligations was shown on November 9, 1949, when defendant Trautman in a letter of that date transmitted to Dr. Pitman the names of Mexican Nationals who were playing in the Minor Leagues subject to the right of reservation in the uniform contract of Organized Baseball.

LXI. That such an agreement with an independent league in a foreign nation had never been consummated previously by the Commissioner of Baseball; by any chief representative of Organized Baseball; but neither defendant Chandler nor defendant Trautman had officially promulgated said agreement with the Mexican National League when plaintiff Jack Corbett organized the plaintiff El Paso Baseball Club, Inc., nor when this club obtained the franchise of the El Paso [fol. 13]Club in the Arizona-Texas "C" League in the off-season between 1948 and 1949.

LXII. That defendant, George M. Trautman, individually and as President of the National Association of Professional Baseball Leagues throughout the seasons of 1949, 1950 and

1951 has abided by the agreement of defendant Albert B. Chandler with the President of the Mexican League, and has not subsequently retracted or repudiated said agreement. This continuing agreement is in violation of law and was made to strengthen the monopoly of Organized Baseball in pursuance of the policy and within the wording of the amendment made in December, 1947, to the National Association Agreement in Article Six, section 6.06 paragraph D thereof.

LXIII. That plaintiff, El Paso Baseball Club, Inc. placed under contract for the season of 1949 four players of Mexican nationality, Jose Sandoval and Laureno Comacho, catchers, Alfredo Jiminez and Guillermo Nunez, outfielders, and also endeavored to sign Catuti Cantos, a pitcher; that Sandoval, Comacho, Jiminez and Nunez had played for clubs in the Mexican League for 1948 under contracts containing the right of reservation.

LXIV. That at a hearing held on March 5, 1950 in El Paso, Texas, as to the status of all of these five players, and other players, including those whom the Juarez Club and the Mexican Club of the Sunset League had signed, it was ruled by defendant Trautman's representative who presided, that there had been an inducement of breach of contract.

LXV. On May 16, 1950, Charles A. Hurth, as Chairman, Frank J. Shaughnessy and Herman D. White as members of the Executive Committee of the National Association of Professional Baseball Leagues decided upon plaintiff's appeal that defendant Trautman's decision in refusing to recognize the right of the plaintiffs to the services of Alfredo Jiminez and Laureno Comacho "was in accordance with the rules and regulations of the National Association and the Commissioner's office."

[fol. 14] LXVI. That defendant Trautman's continued disregard of the limitations of the right of reservation was demonstrated when he remitted merely as an act of grace on August 10, 1950, a fine of $1,000 levied previously upon the El Paso Club as the outgrowth of a dispute over the services of an outfielder, Ventura Morales, emanating from the enforcement during the season of 1950 of the agreement between defendant Chandler and Dr. Pitman. Plaintiff Corbett was directed to pay said fine for conduct detri-

mental to Baseball, under the aforesaid decision of defendant Trautman which was likewise the subject upon plaintiff's appeal of the above-quoted affirmance by the Executive Committee.

LXVII. That after defendant Chandler was twice denied re-election by the Major League Club owners, and during the current season of 1951, Organized Baseball has continued to respect the agreement entered into by him on its behalf with Dr. Pitman. Defendant Trautman announced shortly prior to May 23, 1951 in exercising his existing jurisdiction over disputes arising out of the agreement with the Mexican League that the release by the Laredo Club of the player, David O'Campo, had given the right to the El Paso Club to sign him in or after December, 1950, and that the signature of Dr. Pitman as President of the Mexican League was not an added condition to the release of its clubs' right of reservation to its players.

LXVIII. That because of this reciprocal agreement and the enforcement thereof against plaintiffs herein plaintiffs lost the services of the four Mexican players, Sandoval, Comacho, Jiminez and Nunez, whom they had signed to contracts, and they were further deprived of the opportunity to place Catuiti Cantos and other Mexican players under contract; that they could not use any of these players on the El Paso Ball Club and they were likewise prevented from disposing of them for a considerable profit.

[fol. 15] LXIX. That the plaintiffs have been deprived of valuable rights by the illegal and inequitable conduct of the defendants.

LXX. That the recognition of the "reserve clause" upon an international scale by the defendants herein supplements and is intended to supplement the unlawful adaptation of that clause by the Major Leagues beginning with the season of 1947 and by the Minor Leagues beginning with the season of 1948.

LXXI. That the right of reservation has created a monopoly exercised by the Major League club owners; that this monopoly rests upon the grant of franchises to the clubs of The National League upon the basis of the distribution of population in 1890; and for The American League of the distribution of population in 1900; that each circuit re-

quires the unanimous consent of its club owners for a change; that the Pacific Coast is deprived by these private agreements of Major League status; that Detroit with the intervening growth of the motor vehicle industry should have a second Major League Club; that the existence of the monopoly over Major League Baseball has its source in the "reserve clause;" that the effect this monopoly works against the public interest; that this circumstance was recently admitted in a statement caused to be published nationally by Philip K. Wrigley, owner of "The Chicago Cubs" and Vice President of The National League, protesting against deprivation of Major League standing for the Pacific Coast League.

LXXII. That defendants have used, and are continuing to use, the "reserve clause," the Major League Agreement, the Major-Minor League Agreement and the cognate agreements and rules contrary to the adjudicated principles of equity and common law, and to monopolize or attempt to monopolize trade or commerce among the several states and with foreign nations in violation of section 1, 2 and 3 of the Sherman Anti-Trust Act (15 U. S. C. A., sections 1, 2 and 3) and of section 4 of the Clayton Act (15 U. S. C. A., section 15.)

[fol. 16] And the plaintiffs say that by means of all of said acts done by the defendants in pursuance of the agreements and contracts aforesaid, their combination, conspiracy and monopoly or attempt to monopolize, it has deprived the plaintiffs of their rights in Organized Baseball in the United States and its territories and that they have been damaged to the amount of $100,000.00 by reason of said acts of defendants which are unlawful under the statutes of the United States, the principles of equity and the common law, and plaintiffs bring this action under Sections 1, 2 and 3 of the Sherman Anti-Trust Act (15 U. S. C. A., sections 1, 2 and 3) and section 4 of the Clayton Act (15 U. S. C. A., section 4), to recover threefold such damages.

Maurice H. Koodish, David M. Levy, Attorneys for Plaintiffs, Office & P. O. Address, 707 St. Paul Building, Cincinnati 2, Ohio. Frederic A. Johnson, 511 — Fifth Avenue, New York, N. Y.

[fol. 17] IN UNITED STATES DISTRICT COURT

NOTICE OF MOTION—Filed November 15, 1951

Please take notice that the undersigned will bring the attached motions on for hearing before this Court at its Court Room, United States Courts and Post Office Building, City of Cincinnati, Ohio, on the 5th day of December, 1951, at 11 o'clock A. M., or as soon thereafter as counsel can be heard.

Walter M. Shohl, 1218 Union Central Building, Cincinnati, Ohio; Baker, Hostetler & Patterson, Raymond T. Jackson, 1956 Union Commerce Building, Cleveland, Ohio, Attorneys for Defendant, Albert B. Chandler.

IN UNITED STATES DISTRICT COURT

DEFENDANT CHANDLER'S ALTERNATIVE MOTIONS TO DISMISS AND TO STRIKE—Filed November 15, 1951

The defendant, Albert B. Chandler, individually and as Commissioner of Baseball, moves the Court as follows:

Motion No. I

To dismiss the action on the ground that the Court lacks jurisdiction over the subject matter in that the Amended Complaint fails to allege facts which are essential to the statement of a statutory claim under 15 U. S. C. 15.

Motion No. II

To dismiss the action because the Amended Complaint fails to state a claim upon which relief can be granted.

[fol. 18] Motion No. III

If Motions Nos. I and II be denied, then to dismiss the action as to plaintiff, Jack Corbett, for lack of jurisdiction over the subject matter and because the Amended Complaint fails to state a claim upon which relief can be granted to him.

Motion No. IV

If Motions Nos. I and II be denied, then to strike from the Amended Complaint.

1. Paragraphs XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXVII, XXVIII, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLIII, XLIV, XLVII, XLVIII, XLIX, L, LII, LIV, LV, LVI, LVII, LXVI, LXVII, LXXI.

2. The underlined language in the following quotation of paragraph LXXII of the Amended Complaint:

> **"That defendants have used, and are continuing to use, the "reserve clause," the Major League Agreement, the Major-Minor League Agreement and the cognate agreements and rules *contrary to the adjudicated principles of equity and common law, and* to monopolize or attempt to monopolize trade or commerce among the several states and with foreign nations in violation of sections 1, 2 and 3 of the Sherman Anti-Trust Act (15 U. S. C. A., sections 1, 2 and 3) and of section 4 of the Clayton Act (15 U. S. C. A., section 15).**
>
> **"And the plaintiffs say that by means of all of said acts done by the defendants in pursuance of the agreements and contracts aforesaid, their combination, conspiracy and monopoly, or attempt to monopolize, it has [fol. 19] deprived the plaintiffs of their rights in Organized Baseball in the United States and its territories and that they have been damaged to the amount of $100,000.00 by reason of said acts of defendants which are unlawful under the statutes of the United States, *the principles of equity and the common law,* and plaintiffs bring this action under Section 1, 2 and 3 of the Sherman Anti-Trust Act (15 U. S. C. A., sections 1, 2 and 3) of section 4 of the Clayton Act (15 U. S. C. A., section 4), to recover threefold such damages."**

The grounds of this motion are:

(a) Each of said allegations is redundant, immaterial and impertinent within the meaning of F. R. C. P. 12 (f) and prejudicial to the defendants.

(b) Each of said allegations grossly violates F. R. C. P. 8(a) (2), requiring the pleader to set forth "a short and plain statement of the claim" for relief, and F. R. C. P. 8(e) (1), providing that "each averment of a pleading shall be simple, concise and direct", and in these respects is prejudicial to the defendants.

Walter M. Shohl, 1218 Union Central Building, Cincinnati, Ohio; Baker, Hostetler & Patterson, by Raymond T. Jackson, a Member of the Firm, 1956 Union Commerce Bldg., Cleveland 14, Ohio, Attorneys for Defendant, Albert B. Chandler.

(Identical Notices of Motions and Alternative Motions to Dismiss and to Strike were filed by George M. Trautman, individually and as President of National Association of [Vol. 20] Professional Baseball Leagues, The Cincinnati Baseball Club Company, Powel Crosley, individually and as President of The Cincinnati Baseball Club Company, and Warren Giles, individually and as General Manager of The Cincinnati Baseball Club Company.) The defendants making these motions were the only ones served in this case.

IN UNITED STATES DISTRICT COURT

ORDER OF DISMISSAL—Filed January 25, 1952

This cause came on to be heard on December 5, 1951 on the separate motions of each of the defendants served in the action, to wit., Albert B. Chandler, individually and as Commissioner of Baseball, George M. Trautman, individually and as President of the National Association of Professional Baseball Leagues, Powel Crosley, Jr., individually and as President of The Cincinnati Baseball Club Company, and Warren Giles, individually and as General Manager of The Cincinnati Baseball Club Company, to dismiss the action on the ground that the Court lacks jurisdiction over the subject matter and to dismiss the action because the complaint fails to state a claim upon which relief can be granted; or, if such motions to dismiss be denied, to strike from the complaint certain enumerated paragraphs for vio-

lation of Rules 12(f), 8 (a) (2) and 8(e) (1) of the Federal Rules of Civil Procedure; and was argued by counsel and submitted. Upon consideration of the complaint and of the arguments and authorities submitted by counsel, the Court finds and concludes:

1. That the complaint fails to allege facts which are essential to establishing the jurisdiction of the Court and to the statement of a claim under and within the provisions of the Sherman Act, 26 Stat. 209, U. S. C. 15, Sections 1, 2 and 3, [fol. 21] and the Clayton Act, 38 Stat. 741, U. S. C. 15.

2. That the Court has no jurisdiction of the subject matter of the action.

3. That having decided to dismiss the action on the ground that the Court lacks jurisdiction over the subject matter, the Court does not now pass upon or decide the other motions addressed to the complaint by each of the defendants.

Now, Therefore, it is

Ordered, Adjudged and Decreed that the action be and the same hereby is dismissed against all of the defendants on the ground that the Court does not have jurisdiction of the subject matter of the action, with costs to defendants, to all of which the plaintiffs except.

(S.) John H. Druffel, U.S.D.J.

OK: Walter M. Shohl, Atty. for Defendants. OK: Frederic A. Johnson, Atty. for Plaintiffs.

In United States District Court

Notice of Appeal—Filed February 20, 1952

Sirs:

Notice Is Hereby Given that Jack Corbett and El Paso Baseball Club, Inc., the plaintiffs above named, hereby appeal to the Court of Appeals for the Sixth Circuit from the order and judgment made and entered herein and filed in the office of the Clerk of this Court on the 25th day of Janu-

[fol. 22] ary, 1952, dismissing the complaint herein for want of jurisdiction, and from each and every part thereof.

Dated: Cincinnati, Ohio, February 20th, 1952.

David M. Levy and Maurice H. Koodish, Attorneys for Plaintiffs-Appellants, Office & P. O. Address, 707 St. Paul Bldg., Cincinnati 2, Ohio.

To: Clerk, United States District Court, Southern District of Ohio. Dinsmore, Shohl, Sawyer & Dinsmore, Esqs., Attorneys for Defendants, Union Central Bldg., Cincinnati, Ohio.

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO RECORD—Filed April 1, 1952

It is hereby stipulated and agreed, pursuant to Rule 75(f) of the Federal Rules of Civil Procedure, that the following are designated as the parts of the record to be included in the record on appeal:

1. Caption.
2. Summons.
3. Amended Complaint.
4. Notices of Motions and Alternative Motions to Dismiss and to Strike by Albert B. Chandler, individually and as Commissioner of Baseball. (Identical Notices of Motions and Alternative Motions to Dismiss and to Strike were filed by George M. Trautman, individually and as [fol. 23] President of National Association of Professional Baseball Leagues, The Cincinnati Baseball Club Company, Powel Crosley, individually and as President of The Cincinnati Baseball Club Company, and Warren Giles, individually and as General Manager of The Cincinnati Baseball Club Company.) The defendants making these motions were the only ones served in this case.
5. Order and Judgment appealed from.
6. Notice of Appeal.
7. This Stipulation.

Dated: Cincinnati, Ohio, April 1, 1952.

Frederic A. Johnson, Attorney for Plaintiffs-Appellant. Walter M. Shohl, Dinsmore, Shohl, Sawyer & Dinsmore, Attorneys for Defendants-Appellees.

[fol. 24] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 25] ARGUMENT AND SUBMISSION—February 9, 1953
(Omitted in Printing)

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUDGMENT—Filed February 20, 1953

No. 11,623

The above cause coming on to be heard upon the transcript of the record, the briefs of the parties, and the arguments of counsel in open court, and the court being duly advised,

Now, therefore, it is ordered that the order of the district court dismissing appellants' complaint be and is hereby affirmed. See *Kowalski* v. *Chandler, et al.*, — F. 2d — (C.A. 6) (Decided this day).

[fol. 26] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 27] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 674

JACK CORBETT and EL PASO BASEBALL CLUB, INC., Petitioners,

vs.

ALBERT B. CHANDLER, Individually and as Commissioner of Baseball, et al.

ORDER ALLOWING CERTIORARI—Filed May 25, 1953

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(8916)